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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/862,766

05/21/2001

Stephen P. Vossler

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05/16/2006

GATEWAY, INC.

ATTN: Patent Attorney

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EXAMINER

NEYZARI, ALI

ART UNIT

PAPER NUMBER

2627

DATE MAILED: 05/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/862,766

Applicant(s)

VOSSLER, STEPHEN P.

Examiner

ALI NEYZARI

Art Unit

2627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 21-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 21-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-19 and 21-24 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-19, and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over PCT No. WO 00/75924 (cited by applicant) in view of Mauney et al (US 5,659,156).

PCT, WO 00/75924, disclose a portable audio player suitable for use for an MP3 player. The audio player comprises of an ear module (4) to be supported by an ear (Fig 3). The module includes a speaker (130), a memory for storing digitized audio (F), a

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D/A converter (120), and micro processor (100) (Fig 6) (page 5, lines 18-25, page 7, lines 16-21).

PCT, WO 00/75924 disclose the claimed invention except for the portable audio player to be entirely supported by an ear.

Mauney et al disclose an ear molds for holding communication devices within the ear in a secure and comfortable manner. Fig 3 shows the left ear mold 301 with an audio communication device 302 installed (col. 4, lines 54-64). Fig 1a shows a left ear mold 101 inserted at the opening of a human ear. The ear mold 101 is held in place in the ear , at least in part, by a protrusion of helix 103a (Col 3, lines 28-36). The ear mold of Mauney et al is entirely supported by the ear.

Therefore, It would have been obvious to one of ordinary skill in the art at the time the invention was made, to make the portable audio player of the PCT, WO 00/75924 as an ear mold as taught by Mauney et al, in order to have the portable audio player of the PCT, being entirely supported by an ear (or audio player to be free of any other structure providing support on the body of a user when supported on the ear as claimed in new claims 22-24).

With respect to claim 5, the module comprises a speaker (130) and a controller that converts the stored digitized audio signals to signal useable by the speaker (PCT, Fig 6, page 7, lines 16-24).

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With respect to claims 6, 11, 15, 17 and 21, the module comprises MP3 recorder, where MP3 files stored in the flash memory.

With respect to claims 10 and 14, the module consists of memory (F in Fig 6 of PCT)

With respect to claim 3, PCT '924 disclose the claimed invention except for the ear bud having an ear clip. As shown in fig 4, there is an ear hook 3 to hold the module on the ear. It would have been obvious to one of ordinary skill in the art to use another method for holding the module over the ear such as an ear clip in order to secure the module over the ear.

With respect to claims 12 and 13, it would be an intended use to make the module and its peripheral device to appear as jewelry. In fact, a device with any design could be claimed to be a jewelry look-alike, it is just a matter of taste.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALI NEYZARI whose telephone number is 571-272-7622. The examiner can normally be reached on Mon-Thursday from 8:00 AM TO 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HOA NGUYEN can be reached on 571-272-7579

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ali Neyzari (P.E.)  
Art Unit 2627  
5-12-2006



**ALI NEYZARI**  
**PRIMARY EXAMINER**